

## CIVIL COVER SHEET

## APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provide by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS: LESLIE MARTIN &amp; ROBERT

## DEFENDANTS: ZENITH ACQUISITION CORPORATION

(b) County of Residence of First Listed Plaintiff Delaware  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) Cary L. Flitter, Esq.  
Lundy, Flitter, Beldecos & Berger, P.C., 450 N. Narberth Avenue, Narberth, PA 19072,  
(610) 822-0782

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |  |  |                            |                            |
|--|--|----------------------------|----------------------------|
| PTF  | DEF  | PTF                        | DEF                        |
| Citizen of This State <input type="checkbox"/> 1                   | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State <input type="checkbox"/> 2                | <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened
- Transferred from another district (specify) ☐ 5 ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. §1692

Brief description of cause: Fair Debt Collection Practices Act

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No.

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 5/11/07 SIGNATURE OF ATTORNEY OF RECORD Cary L. Flitter

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**APPENDIX I**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

LESLIE MARTIN & ROBERT MARTIN	:	CIVIL ACTION
	:	
V.	:	
	:	
ZENITH ACQUISITION CORPORATION	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. (      )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits (      )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( ☒ )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. (      )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases) (      )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (      )

5/11/07  
Date

Cary L. Flitter  
Attorney at Law

CARY L. FLITTER  
Attorney for Plaintiffs

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Fax Number

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E-Mail Address

## UNITED STATES DISTRICT COURT

APPENDIX F

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM** to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2645 Ogden Avenue, Boothwyn, PA 19061

Address of Defendant: 220 John Glenn Drive, Suite One, Amherst, NY 14228

Place of Accident, Incident or Transaction: 2645 Ogden Avenue, Boothwyn, PA 19061

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☐

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☐

**RELATED CASE, IF ANY:**

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes ☐ No ☒

**CIVIL: (Place ☒ in ONE CATEGORY ONLY)**

**A. Federal Question Cases:**

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases

(Please specify) 15 U.S.C. §1692 Fair Debt Collection Practices Act

**B. Diversity Jurisdiction Cases:**

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability (Asbestos)
9. ☐ All other Diversity Cases

(Please specify)

**ARBITRATION CERTIFICATION**

(Check appropriate Category)

I, \_\_\_\_\_, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought

DATE: \_\_\_\_\_ Attorney-at-Law \_\_\_\_\_ Attorney I.D. \_\_\_\_\_

**NOTE:** A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 5/14/07 \_\_\_\_\_ 35047 \_\_\_\_\_  
CIV.609 (4/03) Attorney-at-Law Attorney I.D.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LESLIE MARTIN  
2645 Ogden Avenue  
Boothwyn, PA 19061

and

ROBERT MARTIN  
2645 Ogden Avenue  
Boothwyn, PA 19061

Plaintiffs

vs.

ZENITH ACQUISITION CORPORATION  
220 John Glenn Drive  
Suite One  
Amherst, NY 14228

Defendant

CIVIL ACTION

NO.

**COMPLAINT**

**I. INTRODUCTION**

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (“FDCPA”). The FDCPA prohibits collectors from engaging in deceptive and unfair practices in the collection of consumer debt. After the parties reached a written repayment agreement over this disputed obligation and plaintiff made payments ahead of schedule, defendant used self-help to electronically withdraw additional sums from plaintiff’s bank account without authorization.

**II. JURISDICTION**

2. Jurisdiction arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

### **III. PARTIES**

3. Plaintiff is Leslie Martin. Leslie Martin is an adult individual and consumer, resident at the above address.

4. Plaintiff is Robert Martin. Robert Martin is an adult individual and consumer, resident at the above address.

5. Defendant Zenith Acquisition Corporation (hereinafter "Zenith") is believed to be a New York corporation with an address as captioned.

6. Zenith uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, or regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

7. Zenith is a "debt collector" as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

### **IV. STATEMENT OF CLAIM**

8. In early February 2007, a collector with Zenith telephoned the home of Robert Martin.

9. The collector and Robert discussed a consumer debt alleged to be due by Robert's daughter, plaintiff Leslie Martin.

10. Although the debt was disputed, Robert reached an agreement with Zenith to pay \$1,000.00 to commence an installment payment agreement. ("Settlement Agreement")

11. Robert requested that the settlement agreement be committed to writing and Zenith did so by letter dated February 8, 2007. A copy of the letter agreement is attached hereto as Exhibit "A".

12. Robert then made the initial payment on behalf of Leslie by electronic payment via telephone on or about February 10, 2007, in the amount of \$1,000.00.

13. The settlement agreement called for monthly payments thereafter, beginning on March 10, 2007 in the amount of \$60.00 per month on the 10<sup>th</sup> of each month.

14. Plaintiff made all payments on time, in fact made payments early. Plaintiff paid the March 10, 2007 payment on February 26, 2007, the April 10, 2007 payment on March 3, 2007 and the May 10, 2007 payment on March 13, 2007. Check numbers and the declining balance is reflected on Exhibit "A".

15. Notwithstanding that the parties reached an agreement on the settlement figure, and plaintiffs were current, Zenith proceeded to electronically withdraw additional sums from Robert's bank account.

16. No withdrawals from Robert's account were authorized or agreed to by Robert.

17. Moreover, plaintiffs were performing under the settlement agreement, and indeed were paid ahead of the agreed upon schedule.

18. Defendant's actions in using self-help to access bank account was deceptive, unfair and a breach of the agreement between the parties.

#### **COUNT I – FAIR DEBT COLLECTION PRACTICES ACT**

19. Plaintiffs repeat the allegations contained above as if the same were here set forth at length.

20. Defendant Zenith has violated the Fair Debt Collection Practices Act in the following ways:

21. By using deceptive or misleading means in connection with the collection of a debt including a) taking action which can not be legally taken, 15 U.S.C. §1692e, §1692e(5);

b) by using unfair or unconscionable means to collect or attempt to collect a debt; c) making an electronic withdrawal from plaintiff's bank account without proper notice or authorization, 15 U.S.C. §1692f.

**WHEREFORE**, plaintiffs, Leslie Martin and Robert Martin demand judgment against defendant Zenith. for:

- (a) Actual damages;
- (b) Statutory damages;
- (c) Attorney's fees and costs; and
- (d) Such other and further relief as the Court shall deem just and proper.

**V. DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: 5/11/07

/s/ Cary L. Flitter – CLF5997  
CARY L. FLITTER  
Attorney for Plaintiff

LUNDY, FLITTER,  
BELDECOS & BERGER, P.C.  
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